

A replacement vehicle tax of \$200 is imposed on purchases of passenger cars by insurance companies to replace passenger cars of insured persons in settlement of total loss claims. See 625 ILCS 5/3-2001 et seq. (This is a PLR.)

April 14, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/)), is in response to your letter of December 12, 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

TAXPAYER requests a ruling on the proper payment procedure for replacement vehicle transactions under Section 5/3-2001 of the Illinois Vehicle Code and Section 919.80 of the Illinois Administrative Code, where such transaction requires payment to a third party who holds a lien against the insured vehicle.

#### **I. RULING REQUESTED**

We respectfully request that you rule as follows:

That a valid replacement vehicle transaction takes place where Taxpayer makes a payment to a third party lien holder as part of a settlement of a total loss vehicle claim, and the draft for such payment does not include the automobile dealer's name.

#### **II. STATEMENT OF FACTS**

Taxpayer is an insurance company licensed and qualified to do business in Illinois. Taxpayer sells insurance policies to Illinois vehicle owners. The terms of the agreement between Taxpayer and a given insured are set forth in a written insurance policy. During the normal course of business, Taxpayer receives claims from its vehicle owner-clients for losses on insured vehicles. For those claims that, in the judgment of the Taxpayer, are determined to be total loss of the insured vehicle, Taxpayer's practice is to replace the insured vehicle by completing a Replacement Vehicle Transaction (RVT).

Generally, an RVT involves the Taxpayer's purchase of a vehicle whose value is proximate to that of the damaged insured vehicle. The replacement vehicle is purchased from an automobile dealer. Payment for such purchase is made to the automobile dealer and the insured as co-payees. However, if the damaged insured vehicle was subject to a car loan in the nature of a third party lien, a separate payment is directed to the lien holder to the extent of the amount due to the lien holder. The payment made to the dealer and insured as co-payees is reduced accordingly. Taxpayer does not include the automobile dealer's name on the payment to the third party lien holder.

After Taxpayer purchases the replacement vehicle, Taxpayer prepares and timely files Illinois Department of Revenue Form RVT-7 -- REPLACEMENT VEHICLE TAX RETURN. Taxpayer remits payment of the tax due with the tax return. In preparing a given tax return, Taxpayer periodically refers to Illinois Department of Revenue Publication ST-9 -- A GUIDE FOR REPORTING SALES USING FORM ST-556. The Preface to Publication ST-9 contains a warning advising taxpayers that the content of the publication does not replace statutes, rules, regulations, or court decisions. Part 2 of Publication ST-9 provides guidance on RVTs. Such guidance includes instructions informing taxpayers that a valid RVT requires that payment be directed to an automobile dealer and insured together, or in the alternative, just to the automobile dealer. Publication ST-9 does not address the procedure to be followed in those cases where the damaged vehicle is subject to a security interest held by a third party lien holder .

### **III. RELEVANT DOCUMENTS**

Attached are the following documents:

- A. Specimen insurance policy (Exhibit A);
- B. Taxpayer's written procedures for Replacement Vehicle Transactions (Exhibit B);
- C. Illinois Department of Revenue Form RVT-7 -- REPLACEMENT VEHICLE TAX RETURN (Exhibit C);
- D. Preface to Illinois Department of Revenue Publication ST-9 -- A GUIDE FOR REPORTING SALES USING FORM ST-556 (Exhibit D);
- E. Illinois Department of Revenue Publication ST-9, Part 2 -- REPLACEMENT VEHICLE TAX (Exhibit E); and
- F. Illinois Form 2848 -- POWER OF ATTORNEY.

### **IV. TAX PERIOD AT ISSUE AND PENDING AUDIT**

Taxpayer requests the aforementioned ruling for all future RVTs. The tax period at issue consists of an event, viz., an RVT. Therefore, the tax period is not measured in temporal terms such as months, quarters, or years.

To the best of the knowledge of Taxpayer and its representative, no audit or litigation is pending with the Illinois Department of Revenue.

## **V. PREVIOUS RULINGS AND REQUESTS**

To the best of the knowledge of Taxpayer and its representative, the Illinois Department of Revenue (Department) has not previously ruled on the same or a similar issue for Taxpayer or a predecessor.

Taxpayer and its representative have not previously submitted the same or a similar issue to the Department and withdrawn it before a letter ruling was issued.

## **VI. STATEMENT OF SUPPORTING AUTHORITIES**

The Illinois Vehicle Code sets forth the following rule:

Sec. 3-2001. A tax of \$200 is hereby imposed on the purchase of any passenger car as defined in Section 1-157 of this Code [625 ILCS 5/1-157], purchased in Illinois by or on behalf of an insurance company to replace a passenger car of an insured person in settlement of a total loss claim.

See 625 Ill. Comp. Stat. 5/3-2001 (2001).

The Illinois Administrative Code provides that where a first party vehicle claim involves total loss of the insured vehicle, the insurance company may choose to satisfy such claim by paying a cash settlement or by replacing the insured vehicle. See Ill. Admin. Code tit. 50, § 919.80(c) (2002).

'Insured' includes any party identified on an insurance contract as having legal rights to the benefits provided thereby. See *id.* at § 919.40.

'First party' includes any legal entity 'asserting a contractual right to payment under an insurance policy or insurance contract arising out of the contingency or loss covered by such policy or contract.' See *id.*

Here, Taxpayer's procedures for replacement vehicle transactions (RVTs) comply with the Illinois Vehicle Code and the Illinois Administrative Code. Taxpayer complies with the RVT requirements under the Illinois Vehicle Code by timely filing Illinois Department of Revenue Form RVT-7 -- REPLACEMENT VEHICLE TAX RETURN for every RVT the taxpayer carries out. Taxpayer also remits payment of the tax due with each tax return. The filing of each tax return and payment of the tax is mandatory pursuant to Taxpayer's company policy and written procedures.

Further, Taxpayer's claim practices with respect to RVTs are proper under Section 919.80 of the Illinois Administrative Code because it has written procedures in place whereby total loss vehicle claims are settled by replacing the insured vehicle. Where replacement involves payment by Taxpayer to a third party lien holder, such as a bank, Taxpayer's practice of excluding the automobile dealer's name from the draft to the lien holder is proper because the automobile dealer is not an 'insured' under the terms of the written insurance policy. Further, the automobile dealer is not a 'first party,' as defined by the Illinois Administrative Code, with respect to the amount due to the third party lien holder. As such, excluding the automobile dealer's name from drafts to third

party lien holders does not invalidate a replacement vehicle transaction or make the taxpayer's claim practice improper.

A publication provided to taxpayers by the Illinois Department of Revenue (Department) is not presumed to have the force or effect of Department rules or regulations. See *Citizens State Bank of Mount Morris v. Thomas*, 130 Ill. App. 3d 925, 932-33, 474 N.E.2d 791, 796-97 (1985) (finding that a Department publication entitled 'Information Bulletin' contained sufficient warning to the taxpayer that the guide was for information only). Here, as in *Citizens State Bank*, the Department's Publication ST-9 contains the term 'guide' in its title and therefore adequately advises taxpayers that the publication is for information only. Moreover, Publication ST-9 contains language expressly warning the taxpayer that the publication does not replace traditional, binding authority such as statutes, regulations, or court rulings.

Given the above, the language in Publication ST-9 that directs taxpayers to make payments regarding RVTs either to the automobile dealer and the insured together or simply to the automobile dealer is not binding.

Based on the foregoing, Taxpayer is not required to include the automobile dealer's name on any drafts paid to third party lien holders, where Taxpayer settles a total loss vehicle claim by replacing the insured vehicle, and such settlement involves payment by Taxpayer to a third party who holds a lien against the insured vehicle. Taxpayer complies with the statutory requirements for RVTs. The Department publication addressing the issue has no binding effect, and so any deviation from the procedure established by the publication is not fatal to the RVT.

## **VII. STATEMENT OF CONTRARY AUTHORITIES**

Part 2 of Illinois Department of Revenue Publication ST-9 -- A GUIDE FOR REPORTING SALES USING FORM ST-556, entitled, 'Replacement Vehicle Tax,' states that '[f]or the replacement vehicle transaction to be valid, the insurance company's check must be made payable *either to both the dealer and the insured person or simply to the dealer.*' See Ex. E (emphasis added). This language suggests that deviation from this procedure, *e.g.*, making a check payable to a third party lien holder, would invalidate a replacement vehicle transaction.

The Taxpayer is unable to locate any authority, other than the aforementioned publication, that is contrary to its views.

## **VIII. REQUEST FOR DELETION**

There are no identifications of any specific trade information that require deletion from the publicly disseminated version of the private letter ruling issued from this request.

We cannot issue the ruling that you request. As you know, the Replacement Vehicle Tax (RVT) imposes a flat \$200 tax on the purchase of a car by or on behalf of an insurance company to replace the car of an insured person in settlement of a total loss claim. Section 5/302001 of the Vehicle Code provides in part that the RVT is only applicable:

“...to that **portion of the purchase price of the replacement vehicle** paid by the insurance company in settlement of the total loss claim...”

An amount paid to a lienholder who is not the dealer is not being applied to the purchase price of the replacement vehicle. As a result, such payments by themselves are prohibited by statute from constituting sufficient data to confirm a valid replacement vehicle transaction. Therefore, the ST-9 instructions are correct when they state:

“For the replacement vehicle transaction to be valid, the insurance company’s check must be made payable either to both the dealer and the insured person or simply to the dealer.”

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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